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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

[Redacted]

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DATE: OFFICE: LOS ANGELES, CA FILE: [Redacted]

IN RE: **JAN 06 2012** Applicant: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:

[Redacted]

**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having obtained entry to the United States by willfully misrepresenting a material fact. The record indicates that the applicant is the daughter of a United States citizen and is the beneficiary of an approved Immigrant Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The Field Office Director found that the applicant had failed to establish that her qualifying relative would experience extreme hardship and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated May 16, 2009.

On appeal, counsel asserts that the applicant has established extreme hardship will result to her qualifying relative if the waiver application is denied. *See Notice of Appeal or Motion (Form I-290) and attachments.*

The record includes, but is not limited to, statements from the applicant's father describing the hardship claim; medical documentation pertaining to the applicant's father; a December 22, 2004 Psychological Evaluation pertaining to two of the applicant's sons; an Initial Psychoeducational Assessment of one of the applicant's sons; a mental health services statement relating to one of the applicant's sons; country conditions report(s); and counsel's brief. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) In general.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

The record indicates that on September 21, 1995, the applicant attempted to enter the United States by presenting a Border Crossing Card belonging to another person. The applicant is, therefore, inadmissible under section 212(a)(6)(C)(i) of the Act for having sought a benefit under the Act through fraud or the willful misrepresentation of a material fact.

Section 212(i) of the Act provides, in pertinent part:

- (i) (1) The Attorney General [now the Secretary of Homeland Security] may, in the discretion of the Attorney General, waive the application of clause (i) of subsection

(a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative. The applicant's father is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. See generally *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire

range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

On appeal, counsel asserts that separation will cause hardship to the applicant’s father, her qualifying relative. Counsel contends that the applicant’s father cannot work because of a knee injury for which he underwent surgery in March 2007. Counsel further notes that following his surgery, the applicant’s father’s lack of mobility has resulted in a weight gain and that his health is not good, thereby adversely affecting his employment opportunities. She states that since her father’s surgery, the applicant has been his sole financial and emotional support.

Counsel specifically claims that the applicant’s father depends on her to supplement his disability payments as they do not cover his living expenses. She notes that in 2008, the applicant gave her father \$2,000 to help pay bills and groceries. If the applicant is removed, counsel states, her father would be forced into poverty as she would not be able to provide him with financial assistance if she lived in Mexico.

Counsel also contends that the applicant’s four United States citizen children need the applicant here with them. She states that the applicant’s now 12-year son has special needs, has been diagnosed with Schizophrenia, takes medication for his condition, and is in special classes at a school for troubled children. She describes this child as violent and very disturbed and reports that he has threatened to kill his brothers and sisters, as well as the applicant. Counsel states that his father is now in a mental institution for the murder of his own mother. Counsel maintains that the applicant needs to stay in the United States, so that her troubled son can obtain the treatment he needs.

The applicant’s father states that the applicant assisted him in paying his bills while he was on disability and could not work. He states that the applicant is the child capable of helping him financially, and that he relied on her for financial help.

The applicant's father states that the applicant's removal to Mexico would result in great psychological, emotional and economic hardship for him. He further asserts that in the wake of a 2007 knee injury he was disabled and did not work for several months, and that the applicant was his sole financial and emotional support. During that time, he states, the applicant paid his rent and bills, and made sure he had food and clothing while he was unable to work. He contends that he would be lost without her as he does not have a wife and his other children do not have the ability to assist him financially.

The applicant's father states that in the wake of his surgery, his feelings of incompetence have resulted in depression and that the applicant has been his "saving grace" who cheers him and makes sure he is following his doctor's orders. He also indicates that he worries about his daughter as she has a mentally-ill child who may eventually have to be institutionalized.

Medical documentation in the record establishes the father's surgery in March 2007. The most recent documentation is a July 24, 2007 medical report indicating that he continues to be unable to return to his former job and that the medical practitioner treating him plans to identify "permanent restrictions" that will apply to any future employment and that an "impairment rating" will be given the applicant's father. However, there is nothing in the record to establish what those permanent restrictions are, if any, or that the applicant has been found to be disabled, and the record contains no proof that he is receiving disability payments.

Financial documentation establishing the applicant's father's income and financial obligations is missing from the record, and, therefore, fails to show his needs and that he requires financial assistance. The record also does not establish that the applicant's father is not working and is on disability. Also, the applicant's father's letter appears to indicate that the applicant provided him with financial assistance for a set period of time and that at the time of his statement, that assistance was over. Also, there is no evidence of the applicant's financial assistance to her father.

The record also lacks evidence to establish the applicant's father's claim of emotional hardship, specifically the nature of that emotional hardship or how it would affect his ability to function. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel and the applicant's father's statements do not constitute evidence of hardship. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The record includes a December 12, 2007 Initial Psychoeducational Assessment indicating that the applicant's now 12-year-old son has various learning disabilities, due particularly to deficits in the areas of Auditory Processing and Attention. It also contains a December 22, 2004 Psychological Evaluation, which indicates that, at five years of age, this child was having emotional outbursts and threatening his peers with knives and expressing a desire to die. The report further states that being relocated to Mexico or separated from the applicant would cause him great distress. A May 29, 2009 letter from a family therapist at Foothill Family Services reports that as of December 23, 2008 this same child has been

undergoing mental health therapy for symptoms of aggressive behavior, irritability, fighting with siblings, lack of motivation, flat affect when sad, and visual and auditory hallucinations.

We find the record to establish that the applicant's now 12-year-old son has significant problems that affect his ability to learn and function, and that he would, undoubtedly, experience hardship as a result of the applicant's removal. The applicant's child is not, however, a qualifying relative in this proceeding and, therefore, any hardships that he might suffer if separated from the applicant may be considered only to the extent they would affect his grandfather.

The record fails to contain the evidence necessary to establish the impact on the applicant's father of any hardships that would be experienced by his grandson. Also, it is noted that as the applicant's father resides in Texas and the applicant in California, it does not appear that he would assume any new responsibilities regarding his grandchildren if the applicant is removed.

It is noted that while counsel, and the applicant's father, contends that the applicant's father will suffer emotionally, the claim of emotional hardship is described only in generalized terms. Also, the record lacks documentation, such as a mental health evaluation, to establish a claim of hardship to the applicant's father. There is no documentation in the record to establish how the applicant's child's problems affect her father, the only qualifying relative.

It is noted that the record indicates that the applicant's father had knee surgery on March 19, 2007. However, the record does not establish that he is disabled or that he is dependent on the applicant for financial assistance. There is no evidence in the record pertaining to the applicant's father's financial situation, or evidence that the applicant assists him financially. Without this evidence the AAO cannot assess the extent of financial hardship, if any, the applicant's father would experience in the applicant's absence.

The AAO finds, therefore, when the hardship factors are considered in the aggregate, the applicant has failed to establish that her U.S. citizen father would experience extreme hardship as a result of separation.

With regard to the hardships that the applicant's father would experience if he relocates to Mexico, it is noted that the applicant does not make this claim. In the absence of clear assertions from the applicant, the AAO may not speculate as to what hardships the applicant's father would encounter if he relocates to Mexico. We must, therefore, conclude that the applicant has failed to establish that her spouse would experience extreme hardship upon relocation.

We note that counsel claims that moving to Mexico would not be in the best interests of the applicant's 12-year-old son. However, the applicant's son is not a qualifying relative, and there is nothing in the record to indicate how any hardships he would experience in Mexico would affect his grandfather.

The AAO finds, therefore, that the applicant has failed to establish that her United States citizen parent would suffer extreme hardship if he relocates to Mexico with her.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's United States citizen parent caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.